

A.P.S. MARKETING, INC. v. M. DEGARO CO., INC.
PACA Docket No. R-99-0059.
Decision and Order filed February 9, 2000.

George S. Whitten, Presiding Officer.
Complainant, Pro se.
Respondent, Pro se.
Decision and Order issued by William G. Jenson, Judicial Officer.

Preliminary Statement

This is a reparation proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*). A timely complaint was filed in which Complainant seeks an award of reparation in the amount of \$27,863.70 in connection with transactions in interstate commerce involving mixed perishable produce.

Copies of the Report of Investigation prepared by the Department were served upon the parties. A copy of the formal complaint was served upon Respondent which filed an answer thereto denying liability to Complainant. Respondent filed a counterclaim arising out of the same transactions as were the subject of the complaint. Complainant filed a reply to the counterclaim denying any liability thereunder.

The amount claimed in neither the formal complaint nor counterclaim exceeds \$30,000.00, and therefore the shortened method of procedure provided in the Rules of Practice (7 C.F.R. § 47.20) is applicable. Pursuant to this procedure, the verified pleadings of the parties are considered a part of the evidence in the case as is the Department's Report of Investigation. In addition, the parties were given an opportunity to file evidence in the form of sworn statements. Complainant filed an opening statement, and Respondent filed an answering statement. Complainant did not file a statement in reply. Neither party filed a brief.

Findings of Fact

1. Complainant, A.P.S. Marketing, Inc., is a corporation whose address is 1025 W. Sunnyside Ave., Visalia, California. At the time of the transactions involved herein Complainant was licensed under the Act.
2. Respondent, M. Degaro Co., Inc., is a corporation whose address is 225 W. 2nd Street, Cincinnati, Ohio. At the time of the transactions involved herein Respondent was licensed under the Act.
3. At all times relevant to the transactions herein Complainant allowed Fred Chaseley to trade as a broker under Complainant's license, and listed Fred Chaseley as associated with Complainant in trade publications.
4. Acting through Fred Chaseley, Complainant sold and shipped to Respondent

numerous loads of perishable produce for which Complainant invoiced Respondent in amounts totaling \$88,900.25. Complainant received payment on the transactions in amounts totaling \$61,036.55.

5. Respondent dealt only with Fred Chaseley in regard to the transactions that are the subject of the complaint. Fred Chaseley made allowances to Respondent as to some of the transactions and directed Respondent as to how payments should be made. Respondent followed the instructions of Fred Chaseley in the making of payments, and most payments were made directly to Fred Chaseley. Fred Chaseley appropriated some of the payments to himself, and misdirected some of the payments to third parties. The table below delineates pertinent information as to how, and under what circumstances, payments were made.

¹ Date & #	² Inv. Dt & #	³ Payee	⁴ 2d Payee	⁵ Endorsed	Amount
4/28/97 48234	4/18/97 663	F.C.	A.P.S.	A.P.S.	\$ 2,535.40
4/28/97 48235		F.C.	A.P.S.	A.P.S.	2,025.00
4/28/97 48236	4/14/97 645	F.C.	A.P.S.	A.P.S.	8,064.00
4/28/97 48237	10/8/97 Shpd. 4/3 766	F.C.		F.C. & D.M.C.	737.50
4/28/97 48238		F.C.	A.P.S.	A.P.S.	2,604.00
4/29/97 48247	4/3/97 588	F.C.	A.P.S.	A.P.S.	450.00
5/13/97 48301	4/16/97 Shpd. 4/9 713	F.C.		F.C. & D.M.C.	1,575.00
5/22/97 48329	4/11/97 774	F.C.		F.C. & Yuma	960.00
6/3/97 48367	4/17/97 783	F.C.		F.C. & Yuma	2,018.00
6/3/97 48368	5/1/97 637	F.C.		F.C. & Yuma	482.50

6/3/97 48370	4/25/97 611	F.C.	F.C. & A.P.S.	3,354.00
6/3/97 48371	4/25/97 610	F.C.	F.C. & Hanline	8,886.00
6/3/97 48372	5/1/97 625	F.C.	F.C. & A.P.S.	2,095.00
6/3/97 48373	5/1/97 624	F.C.	F.C. & Yuma	560.00
6/3/97 48375	5/15/97 662	F.C.	F.C. & Hanline	10,577.40
7/7/97 48470	6/7/97 Shpd. 5/6 711	A.P.S.	A.P.S.	2,778.75
7/7/97 48473		F.C.	F.C. & A.P.S.	175.00
7/7/97 48474	5/19/97 671	F.C.	F.C. & A.P.S.	5,326.00
7/7/97 48475		F.C.	F.C. & A.P.S.	2,525.00
7/7/97 48476		F.C.	F.C. & A.P.S.	10,440.00
7/7/97 48478		F.C.	F.C. & A.P.S.	15,488.00
7/7/97 48480		F.C.	F.C. & A.P.S.	176.00
7/8/97 48481		F.C.	F.C. & A.P.S.	302.90
7/18/97 48527	4/28/97 665	A.P.S.	A.P.S.	2,697.50
8/20/97 48663	5/8/97 773	Hanline	Hanline	3,450.00

8/20/97	5/24/97	Hanline	Hanline	4,606.60
48664	674			

¹ Date of issuance of check and check number.

² Shipping date (shown on invoice) is the same as the invoice date unless otherwise stated. Where no invoice number appears the transaction was not included in the complaint.

³ F.C. = Fred Chaseley; A.P.S. = A.P.S. Marketing, Inc. or some variation thereof; Hanline = R. S. Hanline & Company or some variation thereof.

⁴ Indicates that the second payee was handwritten along side the initial payee in a different hand.

⁵ D.M.C. = Dona M. Chaseley, reputedly Fred Chaseley's wife. Yuma = Yuma Distributing Company.

6. An informal complaint was filed on October 30, 1997, which was within nine months after the causes of action alleged herein accrued.

Conclusions

Complainant seeks to recover from Respondent the difference between payments received in the amount of \$61,036.55, and the \$88,900.25 amount which it invoiced to Respondent. Complainant alleges that since Respondent received invoices from Complainant and instead paid Fred Chaseley, or other parties at Fred Chaseley's direction, Respondent should be liable for all payments that did not reach Complainant.

Respondent admits receiving Complainant's invoices, but alleges that some invoices were not received in a timely fashion. Respondent matched the payments with the invoices after Complainant faxed all the invoices to Respondent at the end of October, 1997. It appears that some of the invoices may not have been sent to Respondent on the dates stated on the invoices, since the sequence of the numbers of the invoices does not always match the dates on the invoices. For instance invoice numbers 610 and 611 are dated 4/25/97 and state that shipments were on the same dates. However, invoice 774 is dated 4/11/97 and states that shipment was made on that date. There are many such discrepancies. However this question mark in Complainant's case pales into insignificance compared to other considerations.

The events that gave rise to this case do not appear to derive from any wrong doing by either Complainant or Respondent, but from that of Fred Chaseley, a person in whom both parties reposed trust. We are not privy to exactly what caused Mr. Chaseley to depart from that mode of conduct that earned him the initial trust of the parties herein, but when he began to err, he erred with a vengeance. Checks that should have been sent to Complainant were sent to other parties and in some cases were appropriated to his own use. The table set forth in Finding of Fact 5 shows how the checks were directed and misdirected. The pertinent fact that bears

most heavily on Complainant's claim for reparation is the fact that Complainant admits that during the times relevant to the disputed transactions Mr. Chaseley was trading under Complainant's license, and was listed in trade publications as associated with Complainant. Mr. Chaseley was thus clothed with authority by Complainant to receive payments, direct payments, and make adjustments. These actions by Mr. Chaseley were binding on Complainant.¹ In addition to these facts, it is clear that Complainant acquiesced in the manner of payment. Complainant received and negotiated checks on a continuing basis that were made out initially to Fred Chaseley. Although Complainant maintains that it protested this arrangement, apparently protests were made through Chaseley, and in any event, even if Complainant had shown any direct protest to Respondent, it is clear that it acquiesced in Respondent's continuing to make out checks directly to Chaseley. This did not change until the checks dated July 7, and July 17, 1997, but this was near the end of the series of payments.

The two payments where the checks were made out to Hanline might seem at first blush to demand a different result. However, an examination of the documentation submitted by Respondent in connection with Complainant's invoices 773 and 674 shows that the bills of lading covering the loads do not disclose Complainant as the shipper. It was not Fred Chaseley's practice to issue any type of memorandum as to any of the loads, but credit memos issued by Respondent as to the two loads show credit due to "Hanline Co. (per Fred Chaseley)." Complainant allowed Fred Chaseley to deal in this manner with its produce and has not shown any reason why Respondent, having paid in accordance with the instructions of Complainant's agent, should now have to pay Complainant again. We conclude that the complaint should be dismissed. The counterclaim is framed so as to actually constitute a defense, and should also be dismissed.

Order

The complaint is dismissed.

The counterclaim is dismissed.

Copies of this order shall be served upon the parties.

¹See *Joe Phillips, Inc. v. City Wide Distributors, Inc.*, 44 Agric. Dec. 468, 1400 (1985); *Western Cold Storage v. Schons*, 38 Agric. Dec. 903 (1979); *Johnson Produce v. R. L. Burnett Brokerage Co.*, 37 Agric. Dec. 1743 (1978); *George Arakelian v. Leonard O'Day*, 31 Agric. Dec. 1395 (1972); *The G. Fava Co. v. Parkhill Produce Co.*, 19 Agric. Dec. 928 (1960); *Robert Johnson v. Carl Fritchey, et al.*, 16 Agric. Dec. 1082 (1957); *Tri-State Sales Agency v. Palmetto Fruit & Produce Co.*, 14 Agric. Dec. 1140 (1955).

